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Marriage Covenant in Catholic Doctrine: The Pastoral Constitution on the Church *Gaudium et Spes* — the Apostolic Exhortation *Familiaris Consortio* — the Code of Canon Law — the Code of Canons of the Eastern Churches

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Introduction

“God Himself is the author of matrimony”¹ — pronounces one of the most important magisterial teachings of the Pastoral Constitution *Gaudium et Spes*.² Both its self-evident biblical roots as well as the whole prophetic-magisterial context of the Council Fathers’ statements, preceded by the desire for a contemporary illumination of the revealed truth,³ seal the significance of this statement. And its message is obvious: every Catholic theologian, or canonist, speaking about the essence of the unbreakable nature of the bond between a man and a woman, ought to con-

¹ VATICAN COUNCIL II: *Pastoral Constitution “Gaudium et Spes” on the Church* [further: GS], n. 48, 1

² Cf. A. MIRALLES: *El Matrimonio. Teología y vida*. Madrid 1997, p. 15.

³ GS, n. 47, 3.

sider the doctrinal scope of the theology of the Covenant.⁴ What premises determine such, and it is worth emphasizing — only right, epistemological approach? The Revelation and entire Catholic Tradition, as Fathers of the Second Vatican Council affirm it, proclaim that the Triune God placed, in the very central part of His plan of Creation, an unusual gift, the perfect gift of love of the Creator for the man. Here, from the personal divine-human love bond of God's Covenant with the man is born the "institutional," personal, inter-human bond: The marriage bond, a permanent relationship of the bride and groom, called upon to radiate the Spirit⁵ and bring a special blessing into this world. This special sign of God's saving action (the primordial sacrament — as John Paul II calls it⁶) — reflecting the original unity of the nature and Grace, Creation and Covenant — combines in itself not only a personal, but also religious-spiritual dimension.

Since the dawn of history the transcendence has been an indispensable determinant of the essence of marriage.⁷ It is true that the Catechism of the Catholic Church enhances marriage when it illustrates the relationship between the first bride and groom as the original divine-human covenant, in which marital love enters divine love to become a part of it.⁸ Highly instructive here is the teaching of John Paul II, who on many occasions repeated that the *consortium totus vitae*⁹ is born in the Covenant of Love, strictly following the logic of the Creation economy. God in His creative act, "in the image and likeness of God," brought "marital communion," so to speak, out of the mystery of the Trinitarian "We," and in this way, already in the First Covenant, permanently bound the relationship of a man and a woman with His Mystery.¹⁰

Thus, the simple, positive message of the Church teaching on Matrimony can be formed in the following way: A man and a woman through the marital Covenant of Love¹¹ are no longer two, but become

⁴ See *Catechism of the Catholic Church* [hereafter: CCC], nn. 1601–1605.

⁵ JOHN PAUL II: *The Redemption of the Body and Sacramentality of Marriage (Theology of the Body)*. Electronic Edition © Copyright 2006. Available online: http://www.catholicprimer.org/papal/theology_of_the_body.pdf, p. 41.

⁶ *Ibidem*, pp. 49, 250.

⁷ Cf. IOANNES PAULUS II: "Allocutio ad Romanae Rotae iudices" (30.1.2003). *Acta Apostolicae Sedis* [hereafter: AAS] 95 (2003) p. 394, n. 3.

⁸ CCC, n. 1639.

⁹ Code of Canon Law [hereafter: CIC 1983], can. 1055 § 1; Code of Canons of the Eastern Churches [CCEO], can. 776 § 1.

¹⁰ JOHN PAUL II: *Letter to Families "Gratissimam Sane"* (2.2.1994) [hereafter: GrS], n. 8.

¹¹ Cf. IDEM: *Apostolic Exhortation "Familiaris Consortio"* (22.11.1981) [hereafter: FC], n. 11.

one,¹² so the newly formed personal “we,” substantially differs from any other relationship between two people. The negative message of this teaching should not be overestimated: Human will is too weak so as to autonomously initiate the existence of a new being.¹³ Here comes into view a (hypo)thesis that can summarize the introduction to this work: The pivotal factor for a reliable presentation of marriage/the Sacrament of Matrimony and starting point for penetrating the *de matrimonio* Catholic doctrine should be the truth that the Triune God, Creator of the marriage institution, is a true Creator of every particular marital bond.

1. The Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (December 7, 1965)

It may sound truistic today to remind us that the ecclesiological concept of the Second Vatican Council places Matrimony in the very centre of the theology of the Covenant. Indeed, even if the thesis that the “Covenant” is a hermeneutical key to all Council teachings on marriage¹⁴ has been raised to the rank of obvious truths, we should not depreciate the voice of a well-known theologian, Archbishop Gerhard L. Müller, that the formation of a holistic marriage doctrine is still a matter of the future.¹⁵ We cannot understand the remarks of the current Prefect of the Congregation for the Doctrine of the Faith in any other way, than as an invitation by Catholic theologians/canonists to conducting further, systematic studies on contemporary marriage magisterium, applying the ever-up-to-date demand for a “return to the sources.”

It is widely recognized and there is no doubt about it that nos. 47—52 of the Pastoral Constitution on the Church *Gaudium et Spes* constitute

¹² Gen 1, 27; 2, 24; see A. PASTWA: “‘Już nie są dwoje, lecz stają się jednością’”. Paradygmat antropologiczny wyznacznikiem prawnokanonicznego ujęcia natury węzła małżeńskiego.” In: “*Mężczyznę i niewiastę stworzył ich*”. *Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu*. Red. IDEM. Katowice 2012, pp. 134—152.

¹³ This thesis has been particularly popularized by Matthäus Kaiser, a German theologian and canonist — M. KAISER: “Kirchliches Eherecht im Lichte kirchlicher Ehelehre.” *Theologie und Glaube* 79 (1989), pp. 276—277.

¹⁴ Cf. J. HUBER: “Der Begriff „foedus” in Nummer 48 der Pastoralkonstitution „*Gaudium et spes*.” In: *Rezeption des Zweiten Vatikanischen Konzils in Theologie und Kirchenrecht heute. Festschrift für Klaus Lüdicke zur Vollendung seines 65. Lebensjahres*. Hg. D.M. MEIER, P. PLATEN, H.J.F. REINHARDT, F. SANDERS. Essen 2008, p. 279.

¹⁵ G.L. MÜLLER: *Katholische Dogmatik: Für Studium und Praxis der Theologie*. Freiburg 2005, p. 767.

the most important “marital” sources among all documents of the Second Vatican Council.¹⁶ It is here that the Council Fathers placed the essential exposition of the doctrine on the personal covenant of a man and a woman.¹⁷ It is the truth but for its ascertainment an annex is necessary. The Italian theologian-liturgist Piero Barberi, when studying the *de matrimonio* Council documents, skillfully distinguished those which bear the features of strictly dogmatic enunciations. As it turned out, at least some of these last ones they were found in the constitution *Gaudium et Spes*. The presence of dogmatic statements in the pastoral constitution is justified by two premises. The first one is a general premise connected to the genesis of the document; the second one, of a specific nature, refers to the primary significance of passage no. 48 in the renewed marriage doctrine. As far as the first premise is concerned, the fact worth mentioning is that, at the first stage of its formation, the current pastoral constitution (*Gaudium et Spes*) was presented as a dogmatic constitution (among others, such a meaning was attached to it by the Council’s theological commission). As far as the significance of passage no. 48 of *Gaudium et Spes* is concerned, Piero Barberi quotes the authority of Karl Rahner¹⁸ who shaped a viewpoint that this essential fragment of the Council teaching (entire no. 48), though formally belongs within the pastoral constitution, has the character of a doctrinal exposition.¹⁹

Not less interesting is the opinion of a renowned expert Otto Herman Pesch, on problems of marriage, especially pertaining to relations between key sources on the sacrament of Matrimony found in two constitutions: *Gaudium et Spes*²⁰ and *Lumen Gentium*.²¹ According to the German theologian, we must not yield to the temptation of taking into account, in the theological-legal deliberation over the sacrament of Matrimony, only one of the mentioned constitutions. A thorough researcher should consider

¹⁶ It is sufficient to quote the opinion of Karl Rahner, the greatest Catholic theologian of the 20th century: “Man wird es [GS 47—52] als einen der schönsten Texte des Konzils begrüßen dürfen” — K. RAHNER, H. VORGRIMMER: *Kleines Konzilskompendium*. Freiburg i. Br. 1979, p. 436.

¹⁷ See N. LÜDECKE: *Eheschließung als Bund. Genese und Exegese der Ehelehre der Konzilskonstitution „Gaudium et spes“ in kanonistischer Auswertung. Forschungen zur Kirchenrechtswissenschaft*. Hg. H. Müller, R. Weigand. Bd. 7. Würzburg 1989.

¹⁸ K. RAHNER: “La problematica teologica di una Costituzione pastorale.” In: *La Chiesa nel mondo contemporaneo. Commento alla Costituzione pastorale “Gaudium et Spes”*. Ed. E. Giammancheri. Brescia 1966, pp. 61—83.

¹⁹ P. BARBERI: *La celebrazione del matrimonio cristiano. Il tema negli ultimi decenni della teologia cattolica*. Roma 1982, pp. 89—90.

²⁰ GS, nn. 47—52.

²¹ VATICAN COUNCIL II: *Dogmatic Constitution on the Church “Lumen Gentium”* [henceforth: LG], n. 11,2.

the whole contents of the Second Vatican Council *magisterium* on marriage (and family). What is more, as we consider the sources in *Gaudium et Spes* and *Lumen Gentium*, we must also remember the time perspective of their origin. The succession in which those documents were made public is not without significance. For what reason? The fundamental contents present in the chronologically first dogmatic constitution, did not need to be repeated by the Council Fathers in another pastoral constitution. In short, it is worth remembering that almost a year before issuing the constitution *Gaudium et Spes*, the most important Second Vatican Council document, the Dogmatic Constitution on the Church *Lumen Gentium*, had already been adopted.²²

Affirmation of the roughly presented here, epistemological-methodological axiom of the cohesion and complementarity of the “marital” sources of the Second Vatican Council,²³ allows us to form a general study question in the following way: What original contents on the marital covenant did the Council Fathers contain in the constitution *Gaudium et Spes* and the parallel constitution *Lumen Gentium*, as well as other documents of the Vatican II? At first, it is advisable to inquire what image of the “natural” covenant of persons (*matrimonium in fieri/matrimonium in facto esse*²⁴) comes into appearance from the already mentioned no. 48 of the pastoral constitution?²⁵

A synthetic record of the renewed Catholic *de matrimonio* doctrine is presented — already in its first opening — by the formula initiating no. 48 of the mentioned Council document: “The intimate partnership of married life and love has been established by the Creator and qualified by His laws, and is rooted in the conjugal covenant of irrevocable personal consent.” An exceptional benefit of that magisterial teaching lies in

²² O.H. PESCH: *Das Zweite Vatikanische Konzil. Vorgeschichte, Verlauf — Ergebnisse, Nachgeschichte*. Würzburg 1994, pp. 141—147, 335—336.

²³ I expand on this topic in my work — A. PASTWA: „Komunia w Duchu”. Małżeństwo a Eucharystia w świetle norm kanonów 1065 § 2 i 1119 KPK.” *Ius Matrimoniale* 17 (2012), pp. 7—43.

²⁴ Adequacy of placing this issue in two discussed planes is enhanced — J. EDER: *Der Begriff des „foedus matrimoniale” im Ehe recht des CIC. Dissertationen. Kanonistische Reihe*. Hg. W. AYMANS, K.-Th. GERINGER, H. SCHMITZ. Bd. 3. St. Ottilien 1989, p. 65; J. HUBER: “Der Begriff „foedus...” p. 286.

²⁵ Suitable here could be the remark by Piero Barberi on the admitted order of doctrinal exposition in no. 48 of the Constitution, an exposition that was to harmonize with the *eo ipso sacramentum* principle (conveyed by the canonical tradition) as well as the *evectum code formula* (CIC 1917, can. 1012 § 1): „Il modo di procedere, evidente in sé [...], presenta prima il matrimonio „cosiddetto naturale” e successivamente il matrimonio cristiano sacramentale com „coronamento” del primo” — P. BARBERI: *La celebrazione del matrimonio...*, p. 123.

such a coordination of aspects of a dynamic and structural marriage that the image of the old materialistic-contract institution disappears completely. Chiefly thanks to the specification of the concept of “covenant”²⁶ in describing a personal act constituting marriage (*actus essentialiter amorosus*),²⁷ the external pressure of a welfare factor,²⁸ shaping the image of the marriage as an institution aiming at procreation (rendering “services” for the community of people),²⁹ marked with a distinctive, apersonal and sometimes even anti-personal stigma, has been definitely excluded. A premise for such an evaluation was given by a prior specification of the efficient cause of marriage, contained in the Pio-Benedictine *Code of Canon Law* (CIC 1917), in which the place of a mutual love devotion was taken by a contract with a peculiarly defined subject of a “right to the body” of the spouse.³⁰ Meanwhile, the concept of *foedus coniugii*, purposefully used in the quoted *Gaudium et Spes* passage,³¹ allows for an integration of the unchangeable dimension of the institution (*institutum matrimoniale*), once and for all defined by the Creator and totally independent of human judgement,³² with a non-abstract and original in its historical existential dynamism, event of a unity of persons — the “intimate partnership of married life and love” of the man and woman.

Replacing the old concept of *contractus* with *foedus*, certainly was not an exclusively symbolic measure.³³ And even though among subject experts

²⁶ Cf. G. MANTUANO: *La definizione giuridica del matrimonio nel magistero conciliare*. In: *L'amore coniugale. Annali di dottrina e giurisprudenza canonica*. Vol. 1. Città del Vaticano 1971, pp. 192—193.

²⁷ U. NAVARRETE: *Structura iuridica matrimonii secundum Concilium Vaticanum II. Momentum iuridicum amoris coniugalitatis*. Roma 1994, p. 146.

²⁸ Cf. O. GIACCHI: *Il consenso nel matrimonio canonico*. Milano 1968, pp. 345—346.

²⁹ Cf. A. STANKIEWICZ: “Rilevanza canonica della comunione coniugale.” In: *Vaticano II: bilancio e prospettive. Venticinque anni dopo (1962—1987)*. Eds. R. LATOURELLE, P. ADNÈS. Assisi 1988, pp. 775—776.

³⁰ CIC 1917, can. 1081 § 2.

³¹ See B. HÄRING: *Pastorale Konstitution. Kommentar zum ersten Kapitel des zweiten Hauptteils*. In: *Lexikon für Theologie und Kirche. Das Zweite Vatikanische Konzil. Dokumente und Kommentare*. Bd. 3. Freiburg—Basel—Wien 1968, pp. 429—432.

³² *Intima communitas vitae et amoris coniugalitatis, a Creatore condita suisque legibus instructa, foedere coniugii seu irrevocabili consensu personali instauratur. Ita actu humano, quo coniuges sese mutuo tradunt atque accipiunt, institutum ordinatione divina firmum oritur, etiam coram societate; hoc vinculum sacrum intuitu boni, tum coniugum et prolis tum societatis, non ex humano arbitrio pendet* — GS, n. 48,1.

³³ Of interest here could be the commentary of the acclaimed canonists Joseph Prader and Heinrich J.F. Reinhardt: “GS 48,1 verwendet anstatt “Vertrag” den biblischen Begriff “Ehebund” synonym mit dem Ausdruck “unwiderrufliches personales Einverständnis”. Der Vorschlag, das Wort “Vertrag” zu verwenden, wurde von den Vätern der Ostkirchen abgelehnt, weil in der orientalischen Tradition der sakramentale Charakter der Ehe in seiner mystischen Symbolik hervorgehoben wird und der Vertragsbegriff Schwierigkeiten

there is no agreement whether the intention of the Council Fathers was to transform the model of marriage (*ein fundamentaler Perspektivwechsel*³⁴), one thing seems to be certain: The already mentioned measure was determined by deep philosophical grounds and the resulting-from-them willingness to alter the following paradigm — renunciation of the burden of neo-scholastic thought for the benefit of the affirmation of personalistic message in the teaching on marriage.³⁵ It is unnecessary to add that the substantial purpose was to finally overcome the image of a “cold” institution. Indeed, in this institution the personal good of a man and a woman, called upon to build their matrimonial *communio personarum*, the fundamental human relationship whose goals cannot be narrowed down to sexual-procreative functions,³⁶ was pushed into the far background. The foundation of covenant model assumptions signified a clear doctrinal declaration that in the act of entering into a marriage “contract” the primary goal is not to convey and justify formally defined rights but offer a mutual gift of a person to person.³⁷ Thus, we can safely assume that the inner truth of the marital love covenant’s act, and especially the thoroughness of a personal gift as well as its immanently implied irrevocability, constitutes a reference point for the outlined contents of *intima communitas vitae et amoris coniugal*.³⁸

Renunciation of the “contract model” certainly does not mean challenging the *matrimonium facit partium consensus* principle, or even the contractual nature of the marital consent.³⁹ Yet, due to the paradigm

bereitet” — J. PRADER, H.J.F. REINHARDT: *Das kirchliche Eherecht in der seelsorgerischen Praxis*. Essen 2001, p. 7, fn. 3.

³⁴ N. LÜDECKE: *Eheschließung als Bund...*, p. 770.

³⁵ Heinrich Schmidinger, a known Austrian philosopher-personalist is simply of an opinion that we deal here with the most important and the most basic change of a paradigm in the whole Catholic doctrine — H. SCHMIDINGER: “Von der Substanz zur Person. Paradigmenwechsel im Katholizismus.” *Theologisch-praktische Quartalschrift* 142 (1994): 393—394; see also IDEM: *Der Mensch ist Person. Ein christliches Prinzip in theologischer und philosophischer Sicht*. Innsbruck—Wien 1994.

³⁶ See A. PASTWA: *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej*. Katowice 2007, pp. 16—31.

³⁷ M. KAISER: *Kirchliches Eherecht...*, pp. 275—279.

³⁸ GS, n. 48,1.

³⁹ In this regard, a well-balanced attitude is represented by a German canonist Sabine Demel: “Statt Vertrags- Und Bundesbegriff einander gegenüberzustellen, sollte man [...] vielmehr den Ehevertrag in der umfassenderen Dimension des Ehebundes eingebettet sehen und ihn als den rechtlichen und damit justiziablen »Tailaspekt des Ehebundes« [...] betrachten” — S. DEMEL: *Kirchliche Trauung — unerlässliche Pflicht für die Ehe des katholischen Christen?* Stuttgart 1993, p. 218, fn. 110; see also J.F. CASTAÑO: “Estne matrimonium contractus? (Quaestio disputata)”. *Periodica de re canonica* 82 (1993), pp. 431—476.

of the Covenant,⁴⁰ introduced by the pastoral theological constitution, it is increasingly difficult today to claim that the canonical marriage is a contract,⁴¹ all the more so as the application of the *contractus* term in reference to the sacramental bond seems to be problematic.⁴² Should we then not consider the Council Fathers' concept of *consensus personalis* as a specific manifest of a program return to neo-scholastic conceptual categories and a call to rejecting the inadequate, static vision of the will-consensus?⁴³ Especially when we penetrate the true meaning of such a magisterial decision: The semantically rich Council formula of "the personal consent" makes us interpret every consensual act of will in the marriage covenant as the *actus humanus*, and above all, the *actus amoris*.⁴⁴

Also, other passages of no. 48 of the pastoral constitution contribute essential theological contents into the Catholic marriage doctrine. And what is worth emphasizing here, is that a consistent distinction of biblical connotations in them, go hand in hand with the leading significance attached to the concept of *foedus*.⁴⁵ Recalling Jesus' teaching on the "beginning," the Council Fathers remind us that man and woman through the marriage covenant "are no longer two, but one flesh."⁴⁶ The

⁴⁰ See A. PASTWA: "Sacramentalitas czwartym dobrem małżeństwa?" W: *Ars boni et aequi. Księga pamiątkowa dedykowana Księdzu Profesorowi Remigiuszowi Sobańskiemu z okazji osiemdziesiątej rocznicy urodzin*. Red. J. WROCEŃSKI, H. PIETRZAK. Warszawa 2010, pp. 391—395.

⁴¹ See R. AHLERS: "Bund oder Vertrag. Zur Diskussion um den Ehebegriff." In: *Iustitia in caritate. Festgabe für Ernst Rößler zum 25 jährigen Dienstjubiläum als Offizial der Diözese Rottenburg—Stuttgart*. Hg. R. PUZA, A. WEISS. Frankfurt am Main 1997, pp. 193—207.

⁴² Winfried Aymans, a distinguished canonist emphasized the inadequacy of the *contractus matrimonii* formula for the expression of the Christ-Church relationship (Eph 5:21—33), relationship that lies at the ontic foundations of the sacramental bond between a man and a woman. The blatant objectivism of outdated interpretations was incapable of conveying the truth about the Sacrament of Matrimony as immersed in the Church *communio*, a dynamic reality (*kirchliche Existenz* form) the Creator of which is God himself — W. AYMANS: "Gleichsam häusliche Kirche. Ein kanonistischer Beitrag zum Grundverständnis der sakramentalen Ehe als Gottesbund und Vollzugsgestalt kirchlicher Existenz." *Archiv für katholisches Kirchenrecht* [hereafter: AKKR] 147 (1978), p. 429; cf. J.F. CASTAÑO: *Esne matrimonium contractus?...*, pp. 472—476.

⁴³ See S. VILLEGIANTE: "L'amore coniugale e il consenso matrimoniale canonico (Lettera aperta a Pio Fedele)." *Ephemerides iuris canonici* 46 (1990), p. 95.

⁴⁴ Hence, of the first rank are the words of constitution *Gaudium et Spes: amor [coniugalis — A.P.], utpote eminenter humanus, cum a persona in personam voluntatis affectu dirigatur, totius personae bonum complectitur* — GS, n. 49,1.

⁴⁵ Cf. A. SARMIENTO: *Małżeństwo chrześcijańskie. Podręcznik teologii małżeństwa i rodziny*. Przeł. P. RAK. Kraków 2002, pp. 116—117.

⁴⁶ *Vir itaque et mulier, qui foedere coniugali „iam non sunt duo, sed una caro” (Mt 19, 6), intima personarum atque operum coniunctione mutuum sibi adiutorium et servi-*

“unity of the two” (*una caro*)⁴⁷ comes into being in the covenant of love, following the logic of the economy of Creation. In an excellent commentary to this fragment of the Council doctrine John Paul II in his *Mulieris dignitatem* letter — explicitly quoting the theology of the covenant⁴⁸ — emphasizes the parallels making this passage of the constitution similar to the preceding one, namely the teaching on “a certain likeness between the union of the divine Persons, and the unity of God’s sons in truth and charity.”⁴⁹ There appear self-evident conclusions: Firstly, the mentioned biblical *locus theologicus* reveals the essence of identity of an individual person as a communion being. “This identity consists in the capacity for living in truth and love; even more, it consists in the need for truth and love as an essential dimension of the life of a person. Man’s need for truth and love opens him both to God and to creatures — it opens him to other people, to life ‘in communion’, and in particular, to marriage and to the family.”⁵⁰ Secondly, the teaching of the Catholic Church finds its most profound foundation in the fact that God in His work of creation “in the image of God,” shaped the “conjugal communion” out of the mystery of the Trinitarian “We,” and in his First Covenant permanently used the communion of the man and woman for this mystery.⁵¹

In the second opening of the constitution *Gaudium et Spes* authors present an image of the spouses’ sacramental covenant. “Christ, the Lord abundantly blessed this many-faceted love, welling up as it does from the fountain of divine love and structured as it is on the model of His union with His Church”⁵² — claims the sentence opening the second paragraph of the no. 48 of the considered document. At this place, in concordance with the program exposition of the ecclesial dimension of the sacrament of Matrimony,⁵³ there immediately appears the redemptive-historical context of the theology of the Covenant: “For as God of old made Himself

tium praestant, sensumque suae unitatis experiuntur et plenius in dies adipiscuntur — GS, n. 48, 1.

⁴⁷ Gen 1:27; 2:24.

⁴⁸ “If man is the image and likeness of God by his very nature as a person, then his greatness and his dignity are achieved in the covenant with God, in union with him, in striving towards that fundamental unity which belongs to the internal ‘logic’ of the very mystery of creation” — JOHN PAUL II: *Apostolic letter “Mulieris dignitatem”* (15.8.1988) [henceforth: MD], n. 10.

⁴⁹ GS, n. 24,3; MD, n. 7.

⁵⁰ GrS, n. 8.

⁵¹ Ibidem.

⁵² GS, n. 48,2.

⁵³ See R. ALFS: *Die außerordentlichen Formen der kanonischen Eheschließung im Licht der Lehre von Sakramentalität der Ehe. Eine Untersuchung zur ekklesiologischen Bedeutung der sakramentalen Eheschließung*. Würzburg 1993, pp. 458—477.

present to His people through a covenant of love and fidelity, so now the Redeemer of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of Matrimony.”⁵⁴ The message of this fragment of the constitution should not, in the opinion of commentators, raise any doubts today. It is on the foundation of Baptism and the Living Faith⁵⁵ that the bond of the man and woman turns into a covenant “in the Lord”⁵⁶ — and as a sacrament, it not only does not stop playing its primary function of a sign of the love bond between God and people, but above all, opens — towards more advanced perfection of this task — onto Christ’s saving power and the grace of new consecration.⁵⁷ At this point, the Council theology of the marriage covenant reaches its climax: The central location of the marriage in the order of Creation finds a radical confirmation in the economy of Redemption.⁵⁸ The marital covenant of baptized individuals — already in the form of the Sacrament of New Covenant — reveals itself, in the whole dynamism of its mission, as the updating of *sacramentum Ecclesiae*, that is the mystery of personal unification with God in Jesus Christ.⁵⁹

Essential in this regard are the words confirming a univocally ecclesiological profile of the whole *de sacramento matrimonii*⁶⁰ teaching, uttered in the dogmatic Constitution on the Church *Lumen Gentium*: “Christian spouses, in virtue of the sacrament of Matrimony, whereby they signify and partake in the mystery of that unity and fruitful love which exists

⁵⁴ GS, n. 48,2.

⁵⁵ K. HERZBERG: *Taufe, Glaube und Ehesakrament. Die nachkonziliare Suche nach einer angemessenen Verhältnisbestimmung*. Frankfurt am Main 1999, pp. 312—316. Synthetic remarks on the Council’s understanding of the faith are summed up by the author with a fitted conclusion about what “Matrimony in the Lord” is: “Glaube als Christusbegegnung, ist nicht nur individuell-soteriologisch zu deuten, sondern auch als mit der Taufe grundlegend eröffnete Teilhabe an der Sendung Christi zu qualifizieren und insofern als Moment der Christusbeziehung zu kennzeichnen. Individual-soteriologische und universale Dimension sind hier unterschieden, ohne zu trennen. Taufe und Glaube sind somit konstitutive Momente einer geschichtlich-ekklesialen Christusbeziehung, deren lebensgeschichtlich Realisierung in der sakramentalen Ehe geschehen kann” — ibidem, p. 316. See also Urs Baumann’s commentary in which he notices certain shortcomings of the Council thought in this subject — U. BAUMANN: *Die Ehe — ein Sakrament?* Zürich 1988, pp. 95—99.

⁵⁶ 1 Cor 7:39.

⁵⁷ Cf. FC, n. 13.

⁵⁸ See E. CORECCO: “Il sacramento del matrimonio: cardine della costituzione della Chiesa”. In: *Diritto, persona e vita sociale. Scritti in memoria di Orio Giacchi*. Milano 1984. Vol. 1, pp. 390—409.

⁵⁹ Cf. R. ALFS: *Die außerordentlichen Formen...*, pp. 470—473; K. HERZBERG: *Taufe, Glaube und Ehesakrament...*, pp. 303—311.

⁶⁰ Cf. R. ALFS: *Die außerordentlichen Formen...*, p. 470.

between Christ and His Church, help each other to attain holiness in their married life and in the rearing and education of their children.”⁶¹ To sum up, the invaluable fruit of the Council teaching, briefly presented here, is — according to John Paul II — voicing the truth on the immanence and mutual intertwining of two orders in the marriage covenant: natural and supernatural. The Council Fathers’ consistence in understanding Matrimony, following key guidelines of the ecclesiological paradigm of unity⁶² clearly indicates that “this insertion into the very mystery of the covenant of Christ with the Church” finds its thorough fulfillment in the family, for which, not coincidentally, the term “domestic church”⁶³ was coined.

2. The Apostolic Exhortation *Familiaris Consortio* (November 22, 1981)

In no. 11 of the Apostolic Exhortation *Familiaris Consortio* appeared a formula that should be considered crucial in the whole “marital” *magisterium* of John Paul II: “the covenant of conjugal love.” Suffice it to say that the mentioned formula confirms its importance in two “fields,” outlined by the natural marriage — sacrament relationship; the relationship, which, in the Catholic doctrine, is placed in the very centre of the teaching on the truth about raising, by Christ, of the marriage of baptized persons to the dignity of a sacrament.⁶⁴ Not losing sight of the whole spectrum of the idea⁶⁵ of the pope, creator of the original anthropological theology (“theology of the body”) and of the “marital,” ecclesiological theology (in the spirit of the Second Vatican Council), it is thus purposeful to inquire about his point of enhancing the *foedus amoris coniugalis* words in the theological description of the marriage as such.

⁶¹ LG, n. 11,2.

⁶² See A. PASTWA: “Marriage in the light of the ecclesiological paradigm of unity.” Selected issues. *E-Theologos* 3/2 (2012), pp. 212—228.

⁶³ Ibidem; JOHN PAUL II: *Allocutio ad Romanae Rotae iudices* (30.1.2003)..., pp. 394—395, n. 4.

⁶⁴ See E. CORECCO: “Die Lehre der Untrennbarkeit des Ehevertrags vom Sakrament im Lichte des scholastischen Prinzips ‘Gratia perfecit, non destruit naturam’.” *AKKR* 143 (1974), pp. 379—442; D. BAUDOT: *L’inséparabilité entre le contrat et le sacrement de mariage. La discussion après le Concile Vatican II*. Roma 1987.

⁶⁵ As the limitations of this work allow only for a sketchy presentation of these problems I encourage you to read more in a monograph — A. PASTWA: “Przymierze miłości małżeńskiej”. *Jana Pawła II idea małżeństwa kanonicznego*. Katowice 2009.

A discerning, personalist discourse conducted in the no. 11 of the exhortation, communicates that the foundation upon which “the covenant grows is the genuine gift of a person.”⁶⁶ To aid us in unraveling the anthropological paradigm included in this last phrasing of (the logic of the “gift”),⁶⁷ comes the thought of Karol Wojtyła himself. Man/husband and woman/wife, as every personal subject, remain free and autonomously decide about themselves. And this means that each of them is non-transferable, *alteri incommunicabilis*.⁶⁸ “Indeed, in the natural order, it makes no sense to speak of a person giving himself or herself to another, especially if this is meant in the physical sense [...]. The person as such cannot be someone else’s property, as though it was a thing.”⁶⁹ But paradoxically what is impossible in the natural order can come about in the order of love.⁷⁰ In other words, the “structural” inaccessibility of the persons-spouses does not signify their withdrawing into themselves, but on the contrary, expresses their ontic openness and inclination to offer the marital gift of themselves to each other. We can say that the betrothed love “pulls them out” of their natural inviolability and inaccessibility.⁷¹ Therefore, man and woman are capable of constituting their love reciprocity (communion-bound “we”),⁷² and the “integrality,” defining the marriage communion (*totius vitae consortium*), finds its foundation in a mutual, total and decisive gift of the couple loving each other.⁷³

⁶⁶ Cf. IOANNES PAULUS II: “Allocutio ad Sacrae Romanae Rotae Tribunalis Praeatos Auditores, Officiales et Advocatos coram admissos” (28.1.1982). AAS 74 (1982), pp. 451—452, fn. 6.

⁶⁷ T. STYCZEŃ: “L’antropologia della Familiaris Consortio.” *Anthropotes* 9 (1993), pp. 7—8.

⁶⁸ K. WOJTYŁA: *Love and Responsibility*. San Francisco 1993, p. 96. “*Persona est sui iuris et alteri incommunicabilis*, which we might freely render in the following way: A person is a being of its own and does not share its being with another. *Persona est sui iuris* expresses what I have called selfhood, *alteri incommunicabilis* expresses the resulting solitude of personal being” — J.F. CROSBY: *The Selfhood of the Human Person*. Washington 1996, pp. 24—25.

⁶⁹ K. WOJTYŁA: *Love and Responsibility...*, p. 96.

⁷⁰ “One person can give himself or herself, can surrender entirely to another, whether to a human person or to God, and such a giving of the self creates a special form a love which we define as betrothed love” — *ibidem*, pp. 96—97.

⁷¹ IDEM: “Osobowa struktura samostanowienia.” W: *Osoba i czyn oraz inne studia antropologiczne*. Red. T. STYCZEŃ, W. CHUDY, J.W. GAŁKOWSKI, A. RODZIŃSKI, A. SZOSTEK. Lublin 1994, pp. 421—432; cf. J.F. CROSBY: “The Personalism of John Paul II as the Basis of his Approach to the Teaching of ‘Humanae vitae’.” *Anthropotes* 5 (1989), pp. 54—62.

⁷² “In its most profound reality, love is essentially a gift; and conjugal love [leads — A.P.] the spouses to the reciprocal ‘knowledge’ which makes them ‘one flesh’” — FC, n. 14.

⁷³ “The total physical self-giving would be a lie if it were not the sign and fruit of a total personal self-giving, in which the whole person, including the temporal dimen-

Although it is true that going beyond oneself towards the *communio personarum* is within the power of the human spirit,⁷⁴ it is also true that the husband and wife fulfill this communion in “truth and love” following the objective, unitive as well as procreative sense of their masculinity and femininity.⁷⁵ Here, John Paul II’s teaching sheds some light on a vital factor of the integral vision of marriage. Following the definition of the human body as a language/sign expression of a person, comes a fully justified statement that the “language of the body” (“femininity for masculinity,” “masculinity for femininity”) is both a “substance” as well as the very constitutive essence of the marital communion of persons.⁷⁶ In this context we are not surprised by the culminating point of this segment of the *Familiaris Consortio* teaching: “The only ‘place’ in which this self-giving in its entire truth is made possible, is marriage, the covenant of conjugal love.”⁷⁷

Then what are the first conclusions that can be drawn from the teaching of the exhortation *Familiaris Consortio* on the “nature of the conjugal covenant, elevated into a sacrament”?⁷⁸ Firstly, the “covenant of conjugal love” formula brings the truth that is, unfortunately, not always promoted in the Catholic theology and canon law, on mainly, the moment of formation of the unbreakable “unity of the two.” The true creator of marriage is — each time and invariably — the Triune God Himself. It is He who endows the man and woman with the Grace of vocation to marriage and invites them to the Covenant of love with Himself; a Covenant built upon the foundation of a conscious and free choice made by the nupturients, expressed in the act of marital consent. The activity of God in constituting of the “sacred bond”⁷⁹ is most distinctly expressed — in a Christian marriage — by the direct influence of Christ, who places the love bond of baptized spouses in the very centre of His Covenant with the Church.⁸⁰

Secondly, at this moment, apt is the conclusion that John Paul II’s definition of a marital covenant allows us to show, in the best possible manner, the internal relationship between the reality of marriage in the order

sion, is present: If the person were to withhold something or reserve the possibility of deciding otherwise in the future, by this very fact he or she would not be giving totally. This totality which is required by conjugal love also corresponds to the demands of responsible fertility” — Ibidem, n. 11.

⁷⁴ C. CAFFARRA: “Matrimonio e visione dell’uomo.” *Quaderni Studio Rotale* 2 (1987), pp. 31–33.

⁷⁵ Cf. GrS, n. 8

⁷⁶ JAN PAWEŁ II: *Mężczyznę i niewiastę stworzył ich*. T. 4: *Sakrament...*, p. 70.

⁷⁷ FC, n. 11.

⁷⁸ Ibidem, n. 67.

⁷⁹ GS, n. 48,1.

⁸⁰ Cf. FC, 13; see A. SARMIENTO: *Małżeństwo chrześcijańskie...*, pp. 227–233.

of Creation (containing a hidden sacral character) and the same reality raised to the rank of a sign of the New Covenant (being a sacrament in a strict sense).⁸¹ The following words from the exhortation can serve as a direct proof: “The sacrament of Matrimony has this specific element that distinguishes it from all the other sacraments: It is the sacrament of something that was part of the very economy of Creation; it is the very conjugal covenant instituted by the Creator ‘in the beginning’. Therefore, the decision of a man and a woman to marry in accordance with this divine plan, that is to say, the decision to commit, by their irrevocable conjugal consent, their whole lives to indissoluble love and unconditional fidelity, really involves, even if not in a fully conscious way, an attitude of profound obedience to the will of God, an attitude which cannot exist without God’s grace.”⁸² In the other place, John Paul II adds: “Matrimony, moreover, while being a ‘displaying and conferring grace sign’, is the only one of the seven sacraments that is not related to an activity specifically ordered to the attainment of directly supernatural ends. For the aims of marriage are, not only predominantly, but also properly, ‘by their very nature’, the good of the spouses and the procreation and education of offspring.”⁸³

All in all, the implications from the affirmation of the *foedus amoris coniugalis* formula reach much deeper. The deepening, in no. 13 of the Apostolic Exhortation *Familiaris Consortio*, of the truth that in the spouses’ mutual belonging to each other, the love relation between Christ and the Church, is sacramentally substantiated (in its whole dynamism)⁸⁴ — determines the most crucial, as it seems, contribution of John Paul II

⁸¹ See J. MIRAS, J.I. BAÑARES: *Matrimonio y Familia*. Iniciación Teológica. Madrid 2007, pp. 90—97.

⁸² FC, n. 68. In a speech to the Roman Rota of 2001, we can find the writer’s commentary to these words of the exhortation: “Consequently, the only way to identify the reality that was linked from the beginning with the economy of salvation and that in the fullness of time is one of the seven sacraments of the New Covenant in the proper sense, is to refer to the natural reality presented to us by Scripture in Genesis (1:27; 2:18—25). This is what Jesus did in speaking about the indissolubility of the marital bond (cf. Mt 19:3—12; Mk 10:1—2), and what St. Paul did in explaining the nature of the ‘great mystery’ which marriage has ‘in reference to Christ and the Church’ (Eph 5:32)” — JOHN PAUL II: “Allocutio ad Romanae Rotae tribunal” (1 Februarii 2001). AAS 93 (2001), pp. 363—364, n. 8 (English text available at: http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/documents/hf_jp-ii_spe_20010201_rota-romana_en.html).

⁸³ JOHN PAUL II: “Allocutio ad Romanae Rotae tribunal” (1.2.2001)..., p. 364, n. 8. “The spouses participate in it as spouses, together, as a couple, so that the first and immediate effect of marriage (*res et sacramentum*) is not supernatural grace itself, but the Christian conjugal bond, a typically Christian communion of two persons because it represents the mystery of Christ’s incarnation and the mystery of His covenant” — FC, n. 13.

⁸⁴ R. ALFS: *Die außerordentlichen Formen...*, pp. 473—474.

into the development of the *de sacramento matrimonii* doctrine. Indeed, the aim is to originally develop the idea of Eucharistic analogy.⁸⁵

In the papal teaching a new sense is attached to both the initial as well as final fragments of the “classical” passage of Eph 5:21—33 reach a deep meaning. These words, which the Pope narrows down to the initial verse, (sort of “common denominator”): “Be subordinate to each other out of reverence for Christ,”⁸⁶ express the essential truth of the Sacrament of Matrimony. Now, the mutual relation between the man and the woman (husband and wife) corresponding with the Christian vocation “in the mystery of Christ,” radically results from their mutual reference to the Redeemer and His Sacrifice. The point is, that we should not forget that the marriage is subjected to the logic of the Cross of Christ, which, often connected with pain and suffering, demands, from the married couple, a lot of effort and dedication.⁸⁷ In other words, human love between man and woman (husband and wife) facing the reality of sin, requires salvation.⁸⁸ As the vocation of Christian spouses is to experience *caritas* of the Redeemer, sacrificing His life on the cross,⁸⁹ then what undoubtedly serves the purpose, is their frequent participation in the Eucharist — “the best way to experience the Covenant.”⁹⁰ In short, the Sacramental Covenant in which the husband and wife “mutually bestow and accept each other”⁹¹ — based on submitting the spouses to Christ (following the example of the Church) materializes through experiencing His Love.

The gift of new communion and, together with it, the whole wealth of love dynamism in the marriage covenant is the work of the Holy Spirit given to the bride and groom at the Sacramental ceremony.⁹² Also here, John Paul II perceives essential parallels defining the mentioned analogy. The Spirit of Love acting both during the Liturgy of the Highest Sacrifice as well as during the liturgy of *sacramentum matrimonii* is but the Spirit of the Church. As the Eucharistic Body of Christ builds His Mysti-

⁸⁵ U. BAUMANN: *Die Ehe...*, p. 138. I cover this issue in detail in my book entitled — A. PASTWA: *‘Przymierze miłości małżeńskiej’...*, pp. 149—156.

⁸⁶ Eph 5:21.

⁸⁷ Cf. JOHN PAUL II: “Allocutio ad Romanae Rotae tribunal” (1.2.2001)..., p. 362, n. 6.

⁸⁸ J. NAGÓRNY: “Małżeńskie przymierze miłości.” W: JAN PAWEŁ II: *Mężczyznę i niewiastę stworzył ich*. T. 4: *Sakrament. O Jana Pawła II teologii ciała*. Red. T. STYCZEŃ. Lublin 1998, p. 207.

⁸⁹ Cf. FC, n. 13.

⁹⁰ JEAN-PAUL II: *Discours aux membres du mouvement “Foyers des Equipes des Notre-Dame”* (23.9.1982). Available online: http://www.vatican.va/holy_father/john_paul_ii/speeches/1982/september/documents/hf_jpii_spe_19820923_foyers-equipes-notre-dame_fr.html, n. 3.

⁹¹ GS, n. 48, 1.

⁹² Cf. FC, n. 19.

cal Body,⁹³ because the Eucharist, by the Spirit of Christ gives life to the faithful and the whole Church,⁹⁴ so is the marriage (family) a “place” prepared by God, “in which new citizens of human society are born, who by the grace of the Holy Spirit received in baptism are made children of God, thus perpetuating the people of God throughout the century.”⁹⁵ Showing in the ecclesiological plan, the “deepest relationship” between the Sacrament of the Body and Blood of our Lord with “the first and vital cell” of the Church⁹⁶ leads to significant specifications. Well, we must consider incontrovertible the fact that the essential act of marital covenant (matrimonial consent) of baptized individuals: man and woman, is *in Spiritu Santo* an “ecclesial act” calling to life the sacramental reality: the “domestic church.”⁹⁷

Quoting key statements of the Council Fathers on *Ecclesia domestica* (*domesticum sanctuarium Ecclesiae*),⁹⁸ John Paul II directly says that the Christian marriage (family) — ontically inscribed in the mystery of Christ — is an irreplaceable participant of the saving mission of the Church.⁹⁹ Therefore, the baptized spouses, by the power of the Sacrament, “not only receive the love of Christ and become a saved community, but they are also called upon to communicate Christ’s love to their brethren, thus becoming a saving community.”¹⁰⁰ While the participation of the Christian marriage (family) in the triple mission of Christ the Prophet, the Priest and the King, through the testimony of faith and evangelization and life “in dialogue with God” and “at the service of man,”¹⁰¹ shows the true face of the “domestic church,” which in its sacramental dimension, puts into effect the universal *communio Ecclesiae*.

Into this original papal synthesis of modern sacramentology and ecclesiology, merges the teaching of the Catechism, showing us, on the basis of source references to the key passages of the Vatican II doctrine, the specificity of the sacrament of Matrimony: “Through these sacraments those already consecrated by Baptism and Confirmation for the common priesthood of all the faithful can receive particular consecrations. Those who receive the sacrament of Holy Orders are consecrated in Christ’s name ‘to feed the Church by the word and grace of God’ (*Lumen*

⁹³ Cf. LG, n. 3.

⁹⁴ Cf. J 6:53—58.

⁹⁵ LG, n. 11,2.

⁹⁶ VATICAN COUNCIL II: *Decree on the Apostolate of the Laity* “*Apostolicam Actuositatem*” [henceforth: AA], n. 11,4.

⁹⁷ FC, n. 21.

⁹⁸ LG, n. 11,2; AA, n. 11,3.

⁹⁹ “For this reason, Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state” — FC, n. 56.

¹⁰⁰ Cf. *Ibidem*, n. 49.

¹⁰¹ *Ibidem*, n. 50.

gentium, n. 11, 2). On their part, ‘Christian spouses are fortified and, as it were, consecrated for the duties and dignity of their state by a special sacrament’ (*Gaudium et spes*, n. 48, 2).”¹⁰²

To sum up the remarks on the significance that John Paul II attaches to the *foedus* term for the description of marriage, the conclusion seems to be obvious: Sacramental covenant, perceived through the prism of “Eucharistic ecclesiology,” is by no means an abstract being, narrowed down to static-ontological category. On the contrary, this “covenant of conjugal love”¹⁰³ is a space for a redemptive Encounter and Dialogue. It is a substantial existential-historical reality, inscribed in the dynamism of the enlargement of the Mystical Body of Christ. This is exactly why, John Paul II consistently teaches that in the Gift of the Eucharist, in the Gift of divine *caritas*, the Christian marriage (family) discovers its foundation, as well as the Spirit revitalizing marital (family) “communion” and “mission.”¹⁰⁴

3. The Code of Canon Law (January 25, 1983) and the Code of Canons of the Eastern Churches (October 18, 1990)

The biblical concept of “covenant” is a bridge between the theological and legal definition of marriage. The best proof for it is the usage of this concept in the key canons defining marriage in the 1983 and 1990 codes, especially used in reference to the *matrimonium in fieri*.¹⁰⁵ Indeed, considering everything, justified is connecting the *matrimoniale foedus* with the moment of constituting of the bond between the man and woman.¹⁰⁶ Suffice it to say that such a legislative decision, and no others, meets the demand for the affirmation of principles of the canonical tradition, namely the demand for the contract character of marriage (together with the supplementary nature of the personal and religious dimension of the marital consent)¹⁰⁷ as well the central position of the *eo ipso sacra-*

¹⁰² CCC, n. 1535.

¹⁰³ FC, n. 11.

¹⁰⁴ Cf. *Ibidem*, n. 57.

¹⁰⁵ CIC 1983, cann. 1055 § 1, 1057 § 2; CCEO, can. 776 § 1.

¹⁰⁶ See in-depth analyses by GC in his known monograph (especially in the Chapter 3) whose pivot is one of the subtitles: “La relazione fra l’atto (‘foedus’) e il rapporto matrimoniale (‘consortium totius vitae’)” — G. LO CASTRO: *Matrimonio, diritto e giustizia*. Milano 2003, p. 83.

¹⁰⁷ “Wie eine eingehende Analyse des Konzilstextes zeigt, besagt der Begriffswechsel zwar nicht, daß die Idee des »Vertrags« völlig aufgegeben wurde, doch läßt sich

mentum rule in the system of marriage law of the Catholic Church.¹⁰⁸ At the same time, it is difficult not to notice the effects of the transplantation of the “covenant of conjugal love” formula (so clearly expressed in the *Familiaris consortio*), into the ground of law, the formula which, mainly in the aspect of the *matrimonium in facto esse*,¹⁰⁹ reveals the wealth of sacramental-ecclesiological contents.

This last statement carries crucial theological-legal implications. The point is that the Catholic *de sacramento matrimonii* doctrine exposition, whose assumption is to view the marriage covenant of baptized individuals through the prism of Christ’s covenant, entails raising and deepening a few related-to-one-another issues. A theologian-canonist faces today some uneasy questions: How to interpret, on the grounds of the canon law, the Council Fathers’ proclamation that “the Saviour of men and the Spouse of the Church comes into the lives of married Christians through the Sacrament of Matrimony”?¹¹⁰ How are these specific and new contents, as they no longer refer to any individuals but the “communion of the two,” of permanent¹¹¹ participation of the spouses in Christ’s life expressed?¹¹² Moreover, the legislative measures adopted in the marriage code law provoke the following questions: Whether the formulation of canon 1055, in the code of 1983 draws us closer to the truth, with the crucial term of *evectum*, by no means opening our eyes (but in fact suggesting) that the contract creates the Sacrament.¹¹³ Or is it that the hermeneutical effort should be focused more on the *ex Christi institutione* formula, consistent with the teachings of the constitution *Gaudium et Spes*

nicht leugnen, daß der Begriff »Bund« theologisch geeigneter ist, um die personale und religiöse Wirklichkeit der Ehe zum Ausdruck zu bringen. Ja, er gewinnt auch diejenigen Elemente zurück und schließt sie mit ein, die aus dem Eheinstitut einen Vertrag »sui generis« machen — einen Vertrag, dessen Dauer und wesentliche Rechtswirkungen dem Willen der Vertragspartner entzogen sind” — L. GEROSA: *Das Recht der Kirche*. Paderborn 1995, p. 276.

¹⁰⁸ See W. GÓRALSKI: “Nierozdzielność ważnej umowy małżeńskiej zawartej między ochrzczonymi i sakramentu (kan. 1055 § 2 KPK i kan. 776 § 2 KKKW).” *Ius Matrimoniale* 12 (2007), pp. 7—33.

¹⁰⁹ Cf. CIC 1983, cann. 1063 nn. 3, 4, 1134; CCEO, can. 776 §§ 1, 2.

¹¹⁰ GS, n. 48,2.

¹¹¹ Cf. R. BELLARMIN: *De controversis. Venetiis 1721*, Tit. 3: *De matrimonio, controvers. 2*, c. 6; T. SÁNCHEZ: *De sancto matrimonii sacramento*. Venetiis 1614, lib. II, disp. 5, n. 7; PIUS XI: “Litterae encyclicae ‘Casti connubii’ (31.12.1930).” *AAS* 22 (1930), p. 583; see also A. PASTWA: “Teologiczny fundament sakramentalności małżeństwa ‘in fieri’ oraz ‘in facto esse’.” *Prawo Kanoniczne* [henceforth: PK] 46/3—4 (2003), pp. 65—85.

¹¹² FC, n. 13.

¹¹³ See G. RIEDL: “Macht der Vertrag das Sakrament? Theologische Überlegungen zu einem heiklen Thema des kanonischen Eherechts (c. 1055).” *De processibus matrimonialibus* [henceforth: DPM] 13 (2006), pp. 93—105.

and the Catechism of the Catholic Church,¹¹⁴ included in the rich contents of canon 776 §2, in the code of 1990. In simple terms, does the other choice not give us a chance for a fuller interpretation of the Council teaching in which the Christian marriage has been closely bound with the mystery of Christ¹¹⁵ and as such recognized as one of the most important (fundamental) links of the sacramental fulfillment of the Church.¹¹⁶

It is proper to precede the reference to these issues with a remark of a general nature, both collections of canon law: the Latin one (of 1983) and Eastern one (of 1990), in the “conjugal covenant” term, in the same manner, univocally convey the consensual essence of marriage with the fundamental principle: *matrimonium facit partium consensus*. This principle states that only a conscious and voluntary act of personal, mutual gift and acceptance of man and woman,¹¹⁷ which involves their whole natural ability to love,¹¹⁸ is legally determinant in the constitution of marriage. Hence, a simple conclusion: The above mentioned God’s “communion-creating” action that initiates the marital “unity of the two,” entails as a *sine qua non* condition¹¹⁹ a voluntary expression of the marital will by both nupturients.

The comparatist arrangement of marriage “definitions” in the codes of 1983 and 1990¹²⁰ clearly shows that the transcendental (religious) dimension of the “covenant of conjugal love” was more fully voiced in the codification for the Catholic Eastern Churches. Certainly, canon 1055 of the code of 1983,¹²¹ introducing the concept of the *matrimoniale* foe-

¹¹⁴ GS, n. 48,2; CCC, nn. 1612—1617.

¹¹⁵ Cf. K.-H. SELGE: *Ehe als Lebensbund. Die Unauflöslichkeit der Ehe als Herausforderung für den Dialog zwischen katholischer und evangelisch-lutherischer Theologie. Adnotationes in Ius Canonicum*. Bd. 12. Frankfurt am Main 1999, pp. 280—292.

¹¹⁶ Formal limitations allow us only for a brief outline of the subjects that require further deepened studies.

¹¹⁷ CIC, can. 1057 § 2; CCEO, can. 817 § 1.

¹¹⁸ Cf. J. HERVADA: *Diálogos sobre el Amor y el Matrimonio*. Pamplona 1975, p. 118.

¹¹⁹ Cf. Z. GROCHOLEWSKI: “Sakrament małżeństwa: fundament teologiczny prawodawstwa kościelnego.” *PK* 40/1—2 (1997), pp. 177, 184.

¹²⁰ See J. PRADER: “Der Ehebegriff im orientalischen Kodex. Unterschiedliche Bestimmungen zwischen dem CCEO und dem CIC”. *AKKR* (1991), pp. 408—417; W. GÓRALSKI: “Sakrament małżeństwa w Kodeksie Kanonów Kościołów Wschodnich oraz w Kodeksie Prawa Kanonicznego z 1983 roku. Studium Porównawcze.” *Roczniki Nauk Prawnych* 3 (1993), pp. 5—16;

¹²¹ “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized (§1); For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament (§2).”

dus, enhanced both the personal as well as religious aspect of the marital consent. But it is also obvious that some crucial aspects of the Council definition of the marriage covenant found themselves beyond the mentioned marriage-specifying canon. We should associate with this fact the recommendation of some representatives of the canonist doctrine¹²² that apart from the basic normative regulation of canon 1055 § 1, “magisterial” contents of canons 1063 no. 3 as well as 1134 be consistently included into the orbit of the “defined,” in the Latin codification, Sacrament of Matrimony. Things are made clear by those canonists who petition that a more perfect (doctrinally “better polished”) normative definition of the Sacrament of Matrimony in canon 776 CCEO, be considered an indispensable determinant and aid in the interpretation of the analogical canon 1055 CIC.¹²³

Leaving aside the complexities of the important discussion in the Catholic Church about the legal meaning of *ritus sacer*,¹²⁴ it is worth focusing on the very definition of marriage in canon 776 CCEO.¹²⁵ This canon, specifying, in paragraph 1, the natural marriage, does not merely enhance the personal aspect of the marriage covenant. Our attention is drawn to the original message of the religious aspect, which by no means is used up in the formula of canon 1055 CIC, stating that the marriage “has been raised by Christ, the Lord to the dignity of a Sacrament between the baptized.” Using here the words of the Pastoral Constitution on the Church (“established by the Creator and qualified by His laws”¹²⁶) communicates an important idea, implied by the Economy of Creation: God actively par-

¹²² R. ALFS: “Sakramentale Ehe als ‘Ereignisort’ gelebten Glaubens und Glaubensmangel als Ehenichtigkeitsgrund. Theologischer Anspruch und kanonistische Konsequenz.” *DPM* 5 (1998), pp. 28–29.

¹²³ B. PRIMETSHOFER: “Der CCEO und seine (möglichen) *Auswirkungen* auf das Recht der Lateinischen Kirche.” In: *Neue Positionen des Kirchenrechts*. Hg. K. LÜDICKE, H. PAARHAMMER, D.A. BINDER. Graz 1994, p. 173; K.-H. SELGE: *Ehe als Lebensbund...*, p. 286.

¹²⁴ Cf. The reference in the latest materials — C. VASIL: “Der *ritus sacer* und die priesterliche Segnung — Elemente der Form der Feier der Eheschließung gemäß c. 828 CCEO: intereklesiale und ökumenische Implikationen.” *DPM* 12 (2005), pp. 49–67; A. PASTWA: “Katechizmowe ujęcie formy zawarcia małżeństwa. Postęp czy regres doktrynalny?” *Theologos* 13/2 (2011), pp. 9–27.

¹²⁵ “The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of the offspring (§1). From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace (§2); [...] (§3).”

¹²⁶ GS, n. 48, 1.

ticipates in the binding of the natural marriage covenant. In its turn, paragraph 2 of the 776 CCEO canon contains a statement that we could seek in canon 1055 CIC but to no avail. The words referring to the First and Second Divine Person remain crucial: “[...] in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace.” Briefly speaking, the hereby code description of the sacramental covenant of love can be explained in the following way: A valid marriage between baptized individuals is a sacrament by which God unites the spouses, as in the example of the perfect unity of Christ the Bridegroom and the Church His Bride. This characteristic consecration of the bride and groom carrying in itself a potential for encountering and remaining in unity with Christ (covenant “in the Lord”¹²⁷) is the result of the Sacramental Grace. For these, spouses receive the Holy Spirit, who is “the seal of their covenant, the ever available source of their love and the strength to renew their fidelity.”¹²⁸

To conclude, it is proper to state that the precise description of the religious dimension of the covenant of marriage love in the 1990 (CCEO) codification allowed the Catholic Church legislator to reach two vital, prophetic-didactic goals: Firstly, to show the Christ-Church relationship, rooted in the divine *Caritas*, as the icon for the communion-covenant of conjugal love (*communio caritatis*) being put into effect in the Christian marriage; secondly, to reveal the Trinitarian foundations of the Sacrament of Matrimony. From this viewpoint, the sacramental union of man and woman appears as a sign and tool for the participation in the life of the Persons of the Holy Trinity, or in other words, a relationship that in love finds its deepest foundation.

¹²⁷ 1 Cor 7, 39.

¹²⁸ CCC, n. 1624.

ANDRZEJ PASTWA

Przymierze małżeńskie w doktrynie katolickiej:
 Konstytucja duszpasterska o Kościele *Gaudium et Spes* —
 Adhortacja apostolska *Familiaris Consortio* —
 Kodeks Prawa Kanonicznego — Kodeks Kanonów Kościołów Wschodnich

Streszczenie

Autor już w samym tytule określa ramy ekspozycji ważnej kwestii teologicznej i prawnej: obecności we współczesnej katolickiej doktrynie *de matrimonio* pojęcia „przymierze małżeńskie”. Analiza najważniejszych „miejsz” źródłowych (w dokumentach Vaticanum II i w magisterium posoborowym) potwierdza wstępną hipotezę, że punktem wyjścia do zgłębiania wymienionej doktryny winna być prawda, że Trójjedyny Bóg-twórca instytucji małżeństwa jest prawdziwym kreatorem każdego, konkretnego związku małżeńskiego. W płaszczyźnie prawnokanonicznej ta prawda uzyskała dojrzały kształt w Kodeksie Kanonów Kościołów Wschodnich (1990). Znakomicie tu uwypuklony religijny wymiar przymierza miłości małżeńskiej pozwolił prawodawcy Kościoła katolickiego osiągnąć dwa istotne cele profetyczno-dydaktyczne: po pierwsze, ukazać zakonienioną w Boskiej *Caritas* relację Chrystus — Kościół jako ikonę realizowanej w chrześcijańskim małżeństwie komunii-przymierza miłości małżeńskiej (*communio caritatis*); po wtóre, odsłonić trynitarne podstawy sakramentu małżeństwa. W niniejszej optyce sakramentalny związek mężczyzny i kobiety objawia się jako znak i narzędzie uczestnictwa w Życiu Osób Trójcy Przenajświętszej, czyli związek, który w Miłości znajduje swój najgłębszy fundament.

Słowa kluczowe: Objawienie, katolicka doktryna o małżeństwie, chrześcijańska antropologia, teologia małżeństwa, prawo kanoniczne, prawo małżeńskie, przymierze, małżeństwo, przymierze małżeńskie, sakrament małżeństwa, miłość małżeńska, rodzina

ANDRZEJ PASTWA

L'alliance maritale dans la doctrine catholique:
 La Constitution pastorale *Gaudium et Spes* et Exhortation apostolique
Familiaris Consortio
 Le Code du Droit Canonique — le Code des Canons des Églises Orientales

Résumé

L'auteur déjà dans le titre détermine le cadre d'exposition d'une question théologique et juridique importante : la présence dans la doctrine catholique contemporaine *de matrimonio* la notion de « l'alliance matrimoniale ». L'analyse des « lieux » de source (dans les documents de Vaticanum II et dans le magistère post-conciliaire) justifie l'hypothèse initiale que le point de départ pour l'étude de la doctrine mentionnée devrait être la vérité que Dieu trinitaire, le créateur de l'institution de mariage, est aussi le vrai auteur de chaque mariage concret. Dans le domaine juridique, cette vérité prend forme dans le

Code des Canons des Églises Orientales (1990). La dimension religieuse de l'alliance de l'amour conjugal, bien accentuée, a permis au législateur de l'Église catholique de réaliser deux objectifs prophétiques et didactiques : premièrement de montrer la relation Christ — Église, enracinée dans *Caritas* divine, comme l'image de communion-alliance matrimoniale, réalisée dans le mariage chrétien (*communio caritatis*); deuxièmement, pour dévoiler les bases trinitaires du fondement du sacrement de mariage. Dans cette optique l'union sacramentelle de l'homme et de la femme se montre comme un signe et un outil de participation dans la Vie des Personnes de la Trinité, donc une liaison qui trouve son fondement le plus profond dans l'Amour.

Mots-clés: révélation, doctrine catholique sur le mariage, anthropologie chrétienne, théologie du mariage, droit canonique, droit marital, alliance, mariage, alliance conjugale, sacrement de mariage, amour conjugal, famille

ANDRZEJ PASTWA

Il patto coniugale nella dottrina cattolica La costituzione pastorale sulla Chiesa *Gaudium et Spes* e l'Esortazione apostolica *Familiaris consortio* — Il Codice di Diritto Canonico — Il Codice dei Canoni delle Chiese orientali

Sommario

L'autore già nello stesso titolo definisce il quadro di riferimento per la presentazione di un'importante questione teologia e giuridica, vale a dire la presenza del concetto di "patto coniugale" nella dottrina cattolica contemporanea *de matrimonio*. L'analisi dei più importanti "luoghi" delle fonti (nei documenti del Vaticanum II e nel magistero post-conciliare) conferma l'ipotesi iniziale, secondo cui il punto di partenza per l'approfondimento della suddetta dottrina dovrebbe essere la verità che Dio Uno e Trino, creatore dell'istituzione del matrimonio, è il vero creatore di ogni unione matrimoniale. Sul piano giuridico-canonico questa verità ha assunto una forma matura nel Codice dei Canoni delle Chiese orientali (1990). La dimensione religiosa del patto dell'amore coniugale, qui messa in risalto perfettamente, ha permesso al legislatore della Chiesa cattolica di raggiungere due importanti scopi profetico-didattici: da un lato, il legislatore ha potuto dimostrare la relazione Cristo — Chiesa, radicata nella *Caritas* divina, come icona della comunione e del patto dell'amore coniugale realizzati nel matrimonio cristiano (*communio caritatis*), dall'altro lato, ha potuto rilevare i fondamenti trinitari del sacramento del matrimonio. In quest'ottica, l'unione sacramentale tra l'uomo e la donna si manifesta come segno e strumento della partecipazione alla Vita delle Persone della Santissima Trinità, ossia come unione che trova il suo fondamento più profondo nell'Amore.

Parole chiave: rivelazione, dottrina cattolica sul matrimonio, antropologia cristiana, teologia del matrimonio, diritto canonico, diritto matrimoniale, patto, matrimonio, patto matrimoniale, sacramento del matrimonio, amore coniugale, famiglia